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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,840	09/11/2003	John S. Greeson	2166.07CIP	4829

30996 7590 06/08/2007  
ROBERT W. BECKER & ASSOCIATES  
707 HIGHWAY 333  
SUITE B  
TIJERAS, NM 87059-7507

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

MAIL DATE	DELIVERY MODE
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06/08/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/659,840	<b>Applicant(s)</b> GREESON ET AL.	
	<b>Examiner</b> NEIL LEVY	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-14& 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-14& 16-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

Claims 1,2,4-14,16-21 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The rejection is retained as to the non-systemic criticality; & as to the new matter of claims 20,21, there is no support for a viscosity without limitation @ p. 6, contrary to attorney's argument.

#### ***Claim Rejections - 35 USC § 102***

Claim 1-2,4,5, 9, 10 stand rejected under 35 U.S.C. 102(b) as being anticipated by WALSTEIN- 4176076

No patentable weight is given to future intended use of the composition.

Although no animal use is expressed, the fluids are non-carcinogenic and free of ecological damage-an answer to the problem of prior lubricant skin exposure (column 1, lines 33-38; column 2, line 68) and provide pesticidal effectiveness at ½ to 1% (column 2, lines 48-49; column 3, top). Surfactants are common, but not required (column 5, lines 25-26). The carrier is mineral oil base, of oils of 70-800 SUS (column 5, lines 11-

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13). Example 1 ,oils of SUS 300 @ 67% and 75 SUS @ 25%; a mix resulting in 243 SUS. Example 3 provides another carrier, if given no viscosity to ester and

triethanolamine, of 198 SUS. If in contact with skin, the oil is that of the instant, the pesticides not, therefore, systemic.

Claim1,2,4,5,7,8 standrejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over MALLIS et al 2988473

Claims 1-2 are met by Example V-oil carrier of 103 SUS is mixed with pesticidal dimethylsilicone, a non-systemic insecticidal effect results. Petroleum oils are stated to be well known carriers applied to livestock, to repel flies (column 1, lines 24-30). Auxiliary toxicants include pyrethroids and pyrethrin (column 1, lines 35-41); and organophosphates-parathion (column 3, lines 63-65). The oil as described at Example 5 is considered to be the instant mineral oil, not otherwise defined.

Claim1-2,5, 7-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over b COFFEE et al 4316914 as explained by centistokes to SUS conversion table (Velcon 2003).

Giving no patentable weight to future intended use, the instant composition is shown, permethrin pesticide in carrier with resultant viscosity of 1-50 centistokes are taught (column 2, lines 28-37). 50 centistokes is shown to equate to 230 SUS. Example 1 provides 100 SUS (21.2 centistokes). Example 8 with a volatile compound armasol and Example 9, have viscosities of 230 SUS and 190 SUS respectively (50 and 43 centistokes). The instant claim10 is obvious, as Cerechlor.(column 3, lines 10-19) with viscosity of 100 (480 SUS) would, when mixed as taught permit whatever viscosity desired.

Claim1, 5, 9, 10, 12, 14, 16, 17 stand rejected under 35 U.S.C. 102(b) as being anticipated by LEWER et al 6455504

Spinosyns as insecticides effective against flies when applied topically to animals, the instant method, is at (column 14, lines 34-38 and column 17, line39 and column 18, line 13) applied as is known in the art (column 19, bottom; column 20, top). Exemplary formulations are topically applicable to humans, thus, systematically ineffective (column

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20, line 42; column 21, line 50) as shampoos with silicones, as carriers, of from 100 centipoise to 150,000,000, thus, within the range of the instant carrier viscosity.

### ***Response to Arguments***

Applicant's arguments filed 5/16/07 have been fully considered but they are not persuasive. Attorney's Arguments revolve around the stated critical aspect of the invention, nonsystemic action. However, the means to prevent such effects are only identified as an adaptation, unspecified. Further, the requirement for non-systemic action does not preclude systemic action, which can be permitted in addition to the non-systemic action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

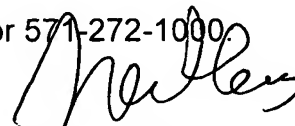
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NEIL LEVY  
Primary Examiner  
Art Unit 1615